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3:01-CV-1206 BANC OF AMERICA V. APOLLO FISHERIES

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BY: *K. Ridgeway* DEPUTY

8 Attorneys for Plaintiff
BANC OF AMERICA SPECIALTY FINANCE, INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

14 BANC OF AMERICA SPECIALTY
FINANCE, INC., a North Carolina
15 Corporation, successor-in-interest and
formerly known as NATIONSCREDIT
16 COMMERCIAL CORPORATION OF
AMERICA,

17 Plaintiff,

18 vs.

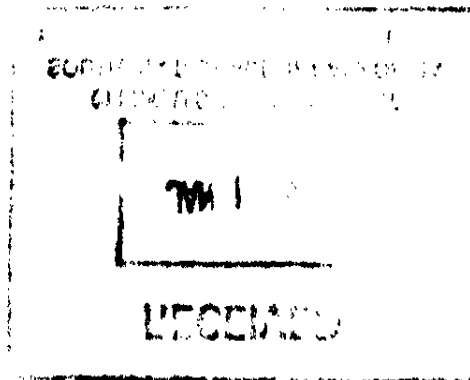
19 APOLLO FISHERIES SERVICE, INC. dba
20 BLUE PORPOISE MARINE; NATALIE
CINTAS-GLADNICK, an individual, and
21 RONALD GLADNICK, an individual,

22 Defendants.

Case No. 01CV1206 BTM (LSP)

FINDINGS OF FACT AND ORDER
AWARDING ATTORNEY'S FEES
AND COSTS TO PLAINTIFF BANC
OF AMERICA SPECIALTY
FINANCE, INC.

Hon. Barry T. Moskowitz



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1 This Court, having considered Plaintiff Banc of America Specialty Finance, Inc's
 2 ("Specialty Finance") Motion for Attorney's fees and Costs, and all pleadings and evidence
 3 filed in support thereof, and there being ^{a notice of no opposition} ~~no opposition~~ filed by Defendants Apollo Fisheries,
 4 Inc. dba Blue Porpoise Marine ("Blue Porpoise"), Natalie Cintas-Gladnick, and Ronald
 5 Gladnick (collectively referred to as "Defendants"), hereby makes the following findings of
 6 facts in support of this Court's order awarding attorney's fees and costs in favor of
 7 Specialty Finance in the amount of \$62,572.78.

8 FINDINGS OF FACT

9 1. On or about July 29, 1997, Specialty Finance and Defendant Blue Porpoise
 10 entered into a written Security Agreement-Inventory ("Agreement") wherein Specialty
 11 Finance financed the purchase by Blue Porpoise of certain boat inventory for resale. One of
 12 the explicit terms of the Agreement allows Specialty Finance to recover its attorney's fees,
 13 court costs and other expenses it incurs in the event Blue Porpoise defaults under the terms
 14 of the Agreement.

15 2. In consideration of Specialty Finance's entering in the Agreement, Natalie
 16 Cintas-Gladnick and Ronald Gladnick each personally executed a General Continuing
 17 Guaranty Agreement ("Guaranties"), guaranteeing the obligations of Blue Porpoise.
 18 Pursuant to the terms of the Guaranties, both Ms. Cintas-Gladnick and Mr. Gladnick
 19 specifically agreed to pay a reasonable attorney's fee and all other costs and expenses that
 20 Specialty Finance incurs to enforce the Guaranties.

21 3. On May 1, 2000, Blue Porpoise assigned to Specialty Finance and Specialty
 22 Finance purchased from Blue Porpoise ("Assignment") a Security Agreement and
 23 Disclosures Statement entered into by and between Blue Porpoise and Jerry and Joellen
 24 Saline relating to the retail purchase and financing of a 1999 Albermarle 320 Express. Blue
 25 Porpoise agreed unconditionally to repurchase the documents on demand for the balance
 26 remaining unpaid, plus any expense of collection, repossession, foreclosure, transportation,
 27 or storage, including attorney's fees and court costs, that Specialty Finance incurs.

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1 4. Blue Porpoise defaulted on its obligations under the Agreement by, among
2 other things, defaulting on its payment obligations to Specialty Finance, selling Specialty
3 Finance-financed inventory out of trust and failing to remit the proceeds and failing to
4 deliver to Specialty Finance exclusive possession of all collateral subject to the Agreement.
5 Blue Porpoise also breached the Assignment by making certain warranties that were not
6 true when made.

7 5. Natalie Cintas-Gladnick and Ronald Gladnick breached their Guaranties by
8 failing and refusing to repay all amounts owed by Blue Porpoise to Specialty Finance under
9 the Agreement.

10 6. Because of Blue Porpoise's and the Gladnick's defaults under the
11 Agreement, Guaranties, and Assignment, Specialty Finance initiated the instant action
12 against Defendants.

13 7. On August 14, 2001, and after Specialty Finance successfully moved this
14 Court for an *ex parte* writ of attachment and temporary protective order, the parties settled
15 the instant action. As part of the settlement, which was placed on the record, Defendants
16 specifically agreed that they were obligated to pay Specialty Finance attorney's fees and
17 costs it incurred in connection with this action.

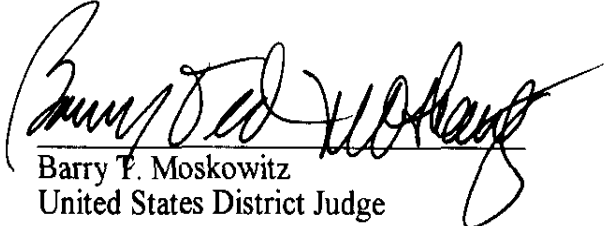
18 8. The attorney's fees and costs provisions of the settlement agreement
19 specifically provide that Specialty Finance can move this Court for an award of its
20 attorney's fees and costs. This provision further grants this Court the authority to award
21 those attorney's fees and costs that the Court deems appropriate, although no formal
22 judgment was entered under the terms of the Settlement Agreement.

23 9. Specialty Finance's request for attorney's fees made pursuant to the
24 Agreement, the Guaranties, the Assignment, and the Settlement Agreement in the amount
25 of \$59,280.28 is fair and reasonable.

10. Specialty Finance's request for costs made pursuant to the Agreement, Guaranties, Assignment and Settlement Agreement, as well as the Local Rules of the Southern District in the amount of \$3,292.59 is fair and reasonable.

IT IS HEREBY ORDERED that Plaintiff Specialty Finance, Inc. shall recover from defendants Apollo Fisheries, Inc. dba Blue Porpoise Marine, Natalie Cintas-Gladnick, and Ronald Gladnick, jointly and severally, its attorney's fees and costs of suit in the amount of \$62,572.78.

Date: January 22, 2002.


Barry T. Moskowitz
United States District Judge

SUBMITTED BY:

JENNIE LA PRADE
RICHARD M. SEGAL
MICHELLE L. ADAMS
PILLSBURY WINTHROP LLP
101 West Broadway, Suite 1800
San Diego, California 92101

By: 
Michelle L. Adams

Docket No. 01CV1206 BTM (LSP)

PROOF OF SERVICE BY MAIL

I, Charles L. Sandlin, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop LLP in the City of San Diego, California.

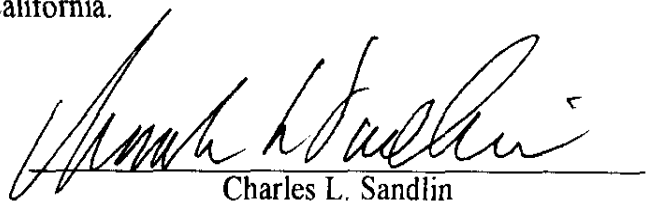
2. My business address is 101 W. Broadway, Suite 1800, San Diego, CA 92101-8219.

3. I am familiar with Pillsbury Winthrop LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

4. On January 16, 2002, at 101 W. Broadway, Suite 1800, San Diego, California, I served a true copy of the attached document titled exactly FINDINGS OF FACT AND ORDER AWARDING ATTORNEY'S FEES AND COSTS TO PLAINTIFF BANC OF AMERICA SPECIALTY FINANCE, INC. by placing it in an addressed, sealed envelope clearly labeled to identify the person being served at the address shown below and placed in interoffice mail for collection and deposit in the United States Postal Service on that date following ordinary business practices:

Evan R. Sorem, Esq.
Gray Cary Ware & Freidenrich LLP
4365 Executive Drive
Suite 1100
San Diego, CA 92121-2133

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of January, 2002, at San Diego, California.



Charles L. Sandlin